

APPEAL NO. 031632
FILED JULY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 15, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth, ninth, and tenth quarters. The claimant appeals, contending that the hearing officer's decision denying SIBs for the quarters in issue is not supported by the evidence and is against the great weight and preponderance of the evidence, and reurging his objection to the admission of Dr. R report. The respondent (carrier) responds, requesting affirmance of the hearing officer's decision.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the eighth, ninth, and tenth quarters. The claimant claimed he had no ability to work during the relevant qualifying periods as a result of his compensable injury. The hearing officer determined that the claimant did not meet the requirements of Rule 130.102(d)(4) because another record showed that the claimant was able to return to work. The hearing officer found that during the relevant qualifying periods the claimant had some limited ability to work and that during the relevant qualifying periods the claimant did not make a good faith effort to find employment commensurate with his ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the eighth, ninth, and tenth quarters.

The claimant contends that the hearing officer's decision is not supported by the evidence and is against the great weight and preponderance of the evidence. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the eighth, ninth, and tenth quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We note that there is no indication in the hearing officer's decision that he gave presumptive weight to Dr. R's report, and that the hearing officer's decision reflects that he considered Dr. R's report as another medical report. In addition to Dr. R's report, there is a functional capacity evaluation report in evidence that supports the hearing officer's decision. We decline to reconsider our decision in Appeal No. 030330-s, decided April 2, 2003, regarding the admissibility of Dr. R's report.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge